

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3502 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

C.R. DWIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner

Mr. S.T.Mehta, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/11/1999

ORAL JUDGEMENT

#. By way of this Special Civil Application the petitioner has challenged the communication at Annexure-A by which the petitioner was communicated the adverse remarks made in his Confidential Report for the period from 30.6.85 to 31.3.1986. At the time of hearing learned advocate for the petitioner made a statement that he does not press prayer (B) in the petition. Therefore, this petition is required to be decided only as regards

prayer (A) in the petition which is in connection with the adverse remarks made in his Annual Confidential Report for the period from 30.6.85 to 31.3.86.

The facts leading to the present petition are as under:

#. That by the communication at Annexure-A the petitioner was communicated the adverse remarks made in his Annual Confidential Report for the period from 30.6.85 to 31.3.1986 to the effect that he was found to be indifferent in the cases in connection with the prohibition and gambling. The following adverse remarks were communicated to the petitioner:

#. The petitioner thereafter made representation to the concerned authority against the same giving his explanation, which is at Annexure.B. In the said representation he had pointed out that he worked satisfactorily and therefore, there is no reason for the authority to make any adverse remarks in his Confidential Report. However, after considering his reply, an adverse entry was posted in the service record of the petitioner. The petitioner has challenged the aforesaid decision of the authority by way of this petition. The petitioner has stated in the petition that there was no reason for the authority to make such adverse remarks in his Annual Confidential Report. He has also stated in the petition that there was no material on record with the authority for making such adverse remarks in his confidential report.

#. In response to the notice issued by this court, the Deputy Administrative Officer has filed affidavit in reply on behalf of respondent no.2. It has been pointed out in para 4 of the said affidavit in reply that the action of the authority can never be said to be arbitrary in any manner. That during the relevant period of the ACRs, the ACR is written for the period from 30.6.85 to 31.3.86, which was written as per the norms and practice of the Government. That the remarks are drawn and recorded after evaluating the facts and performance of the petitioner as recorded by the reporting officer and it is not correct to say that the adverse remarks are

posted in service record on assumption only. At the time of hearing of the petition it has been argued by Mr. S.T.Mehta learned AGP that the adverse remarks are drawn and recorded after evaluating all the facts and materials and the representation made by the present petitioner against the adverse remarks made by the Reporting Officer has been rejected by the concerned authority after evaluating all the materials and service record of the petitioner and thereafter the adverse entry was ordered to be made in the service record of the petitioner.

#. It is not in dispute that the adverse remarks were in fact communicated to the petitioner within time. The petitioner was also given adequate opportunity before posting the adverse entry in his service record and this decision has been taken after his representation was rejected by the concerned authority. It has been pointed out in the affidavit in reply by the Government that when there was good work of the petitioner, the same was appreciated. However, the adverse remarks were given when the petitioner was not paying any attention in curbing prohibition and gambling activities. It was denied that no eph. rolls were maintained as provided in the rules by the Reporting Officer. It is pointed out that the competent authority did peruse the eph.rolls and had also considered the representation of the petitioner. It is also further pointed out that as per the record, during the year under report, the petitioner was working as CPI and he was holding the additional charge of P.I. (Harijan Cell) for the same time. That the Reporting Officer had to arrange the raid operation through LCB and Task Force staff for making out cases for prohibition and gambling in the jurisdiction of the petitioner's charge and therefore, considering his performance, the adverse remarks made in the ACRs. of the petitioner by the Reporting Officer and same were justified. It is stated that the Reporting Officer also observed that the petitioner was making out only show cases and not effective cases. It has been argued by Mr. S.T.Mehta, learned AGP for the respondent that the petitioner was given time and again instructions but he had neglected to follow the same and the DGP and IGP, after careful consideration came to the conclusion that there was no merit in the representation made by the petitioner and accordingly said representation was decided against the petitioner and said decision was conveyed to the petitioner accordingly. Thus, after considering the averments made in the petition, the affidavit in reply as well as the arguments of both the sides, I am of the opinion that there is no illegality or infirmity in the impugned decision. This court while exercising powers

under Article 226 of the Constitution of India cannot sit in appeal over the aforesaid decision and to arrive at a conclusion whether the decision in posting the adverse entry in the service record of the petitioner was correct or not especially when before making the said entry in the service record of the petitioner, he was communicated the same within the time limit prescribed and after considering his representation the same was posted. Therefore, there is no illegality in any manner in the said decision and it cannot be said that said decision suffers from any infirmity or arbitrariness. Ultimately, it was the subjective satisfaction of the authority who has assessed the service record of the petitioner and on that basis said entry was posted in the service record of the petitioner. Said decision therefore, cannot be interfered with while exercising extra ordinary jurisdiction under Article 226 of the Constitution of India. In the circumstances, the petition is devoid of any merit and the same deserves to be dismissed and accordingly it is dismissed with no order as to costs. Rule discharged.